

E. B. TOWNE, JR.

IBLA 82-892

Decided September 22, 1982

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive geothermal lease application OR 18608 WA.

Affirmed.

1. Geothermal Leases: Consent of Agency

The directives of 30 U.S.C. § 1014(b) (1976) and 43 CFR 3201.1-3 are mandatory and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

APPEARANCES: E. B. Towne, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

E. B. Towne, Jr., has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 14, 1982, which rejected in part his noncompetitive geothermal lease application, as it pertained to 640 acres of national forest, for the reason that the Forest Service would not consent to a lease thereof.

Appellant applied for geothermal lease OR 18608 WA on April 27, 1978. The land originally applied for was: T. 13 N., R. 11 E., Willamette meridian, Washington, secs. 7, 8, 9, and 10: all; totaling 2,558 acres. This land is located in Washington within the Gifford Pinchot National Forest. Because the Federal land applied for is under Forest Service control, according to the provisions of 30 U.S.C. § 1014(b) (1976) and 43 CFR 3201.1-3, the consent of the Forest Service is prerequisite to the issuance of the lease.

The Forest Service declined consent for sec. 7 because of its inclusion within the Goat Rocks Wilderness area. BLM issued a decision on September 27, 1978, rejecting the lease application in part. On October 5, 1978, Towne withdrew his application insofar as it covered sec. 7.

In a response to BLM dated April 1, 1982, the Forest Service declined to consent to a lease of sec. 10 because it is in a recreational area. On May 14, 1982, BLM issued a decision in which the lease application was rejected as to sec. 10 because of the lack of consent from the Forest Service. Towne has appealed, alleging error by BLM in failing to consider issuance of a "subsurface lease" for sec. 10, and he asks for the remand of this case with instructions to BLM to issue him such a lease. Appellant notes that he has applications covering three sides of sec. 10.

[1] With regard to the other lands in appellant's geothermal lease application, the Forest Service has approved the leasing of sec. 8 and sec. 9, but only under the stipulation that the lessee "agrees not to occupy or use the surface of the leased lands." As the Forest Service has considered "subsurface only" conditions for sec. 8 and sec. 9, it obviously has considered the potential for sec. 10 to be restrictively leased, and has declined to consent to a lease of sec. 10 subject to the same stipulation.

BLM's decision to reject the application as to sec. 10 was due to the lack of consent from the Forest Service. The directives of the Geothermal Act, 30 U.S.C. § 1014(b) (1976), and the regulations, 43 CFR 3201.1-3, are mandatory; unless the Forest Service gives its consent to the geothermal leasing of the national forest lands, the Department of the Interior may not lease on those lands. *Earth Power Corp.*, 32 IBLA 357 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

